IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11807 of 2002

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JETHALAL UKABHAI PURABHIA

Versus

GUJARAT STATE FINANCIAL CORPORATION

Appearance:

1. Special Civil Application No. 11807 of 2002

MR GM JOSHI for Petitioner No. 1

MR KM PATEL for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 30/06/2004

ORAL JUDGEMENT

1.1 The petitioner working with the respondent Corporation has sought a writ of mandamus against the

respondeat Corporation to correct his date of birth as 6th December 1948 on the basis of the School Leaving Certificate which he has secured on the basis of the inquiry initiated by the respondeat Corporation, and has further sought direction against respondent no.2 to superannuate the petitioner only on the basis of the aforesaid date, and not on the basis of the birth date which was on the record of the respondent corporation, namely 6th April, 1945. Pursuant to the admission of the matter the respondent has filed their reply and subsequently the petitioner has retired on 30th April, 2003.

1.2 Learned advocate Mr. G.M. Joshi for the petitioner submitted that the petitioner had never applied to the corporation for correction of his birth date but in view of the demand made by the respondent corporation on 11th October 1999 the petitioner had gone to his native and with great difficulty he could secure the certificate at Annexure-C (page-11) wherein his date of birth is shown as 6th December, 1948. It is submitted by Mr. Joshi that, in view of the demand made by the respondent Corporation the petitioner has submitted his original school leaving certificate on 12th September, 2001.

1.3 It may be noted that from Annexure-E it has come on record that the petitioner has made an application dated 29th October, 2001 to correct his date of birth on the basis of the School Leaving Certificate, which was rejected by the Corporation vide communication dated 9th November, 2001. It also seems that the petitioner again made an application for correction of his date of birth on the basis of the school leaving certificate and to extend the superannuation date. He has also relied on Government Resolution issued by G.A. Department dated 27th January 1998. Said application of the petitioner was rejected by the respondent by order dated 23rd August 2002 and present proceedings are initiated on 3rd December 2002.

2.1 Learned advocate Mr. Gautam Joshi for the petitioner has contended that the petitioner has never applied for correction of the birth date but he has submitted his school leaving certificate pursuant to the demand made by the respondent Corporation. It is true that the petitioner has produced said certificate on 12th September, 2001 pursuant to the inquiry initiated by the respondent Corporation. But from the record it seems that the petitioner made a request on 29th October 2001 at Annexure-E to the petition, which was turned down by

the respondent Corporation by order dated 23rd August 2002. Said refusal by the respondent vide order dated 23rd August 2002 has not been challenged by the petitioner, instead he sought relief on the basis that since the respondent Corporation initiated inquiry they should give benefit to the petitioner pursuant to their own act.

3.1 Learned advocate Mr. K.M. Patel for the respondent Corporation has pointed out that the petitioner himself has stated in his application dated 20th March 1972 that the petitioner had studied upto 7th Standard and in the form at Annexure-2 (page-25) he had mentioned his date birth 6th April 1945 which was signed by the petitioner himself. The petitioner also produced document from the LIC, wherein petitioner's date of birth shown is 6th April 1945. It is submitted by Mr. Patel that, it is not open for the respondent Corporation under its rules & regulations to correct the birth date of an employee at the fag end of his service life. Apart from that, under Rule 171 of BCSR the date of birth could have been corrected within five years from the date of join in service and not thereafter, whereas the application of the petitioner is made in 2001.

3.2 Mr. Patel has also relied upon the judgment of the Apex Court reported in case of G.M. BHARAT COCKING COAL LTD, WEST BENGAL VS. SHIB KUMAR DUSHAD AND OTHERS, (2000) 8 SCC. PG. 696, wherein it is held by the Supreme Court that High Court do not interfere under Article 226 of the Constitution of India on the decision of the management for correction of birth date of the employee. Apart from that, it is also held that, where the date of birth as entered in service record is questioned before court by an employee shortly before his retirement, the burden lies heavily on him to establish his stand by producing acceptable evidence of clinching nature.

3.3 In the present case the petitioner - employee is retired in 2001 and in view of his own assertion that he has studied upto 7th Standard. But the respondent Corporation has its own doubt about the date of birth mentioned in the school leaving certificate, as the petitioner has stated in his application for employment his date of birth as on 6th April 1945. Since no other document from the competent authority, i.e. from Panchayat or Municipality has been produced by the petitioner, the respondent Corporation has not accepted the said certificate issued by the school in 2001.

3.4 Even as per the judgement of this Court reported in the case of MOTILAL CHIMNAJI HARIGAR Vs. AHMEDABAD MUNICIPAL TRANSPORT SERVICE AND OTHERS, 1997 (1) GLH, pg. 886, wherein it has been held that, no mandamus to correct the birth date can be issued.

4. In that view of the matter also, no writ of mandamus can be issued for correction of date of birth of the petitioner, more particularly when the petitioner has not challenged the decision of the respondent Corporation dated 23rd. August, 2002. Accordingly the petition is dismissed. Rule discharged. No order as to costs.

Dt: 30-6-2004 (K.S. Jhaveri, J)

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